



Asia/Pacific Group  
on Money Laundering

APG ANNUAL MEETING 2003

[AR&UBS WG Implementation Package 2003]

## Consideration and Adoption of the APG Alternative Remittance Regulation Implementation Package

### Purpose

1. This paper presents the APG Alternative Remittance Regulation Implementation Package prepared by the APG Working Group on Alternative Remittance & Underground Banking Systems.
2. This paper proposes that APG members:
  - i) **note** the significant work that has been done by the APG Working Group on Alternative Remittance & Underground Banking Systems;
  - ii) **note** that the FATF, as the standard setter, relied heavily on the APG's work when it issued FATF Special Recommendation VI on Terrorist Financing and the associated Interpretative Note and Best Practices Paper; and
  - iii) **adopt** the APG Alternative Remittance Regulation Implementation Package as a guide for member and observer jurisdictions when implementing and enforcing Special Recommendation VI.

### Background

This Alternative Remittance Regulation Implementation Package builds on initiatives undertaken by the Working Group since 1999 including: case study collection and analysis, typologies workshops, creation of the *October 2001 Working Group Report* and discussion sessions facilitated to specifically progress compilation and refinement of this package. A preliminary draft version of the Implementation Package was produced for detailed consideration by participants at the APG's 2002 Typologies Workshop. At that Workshop participants provided insights from their own experience which helped to refine the package. The Working Group agreed to produce a final Implementation Package for consideration and adoption by APG members at the APG Annual Meeting 2003.

While the APG's Implementation Package stands alone, it also provides further practical assistance to support implementation of FATF Special Recommendation VI on Alternative Remittance and the associated Interpretative Note and Best Practices Paper.

**APG Secretariat**  
**August 2003**



Asia/Pacific Group  
on Money Laundering

**APG Typologies Working Group  
on Alternative Remittance &  
Underground Banking Systems**

**ALTERNATIVE REMITTANCE REGULATION  
IMPLEMENTATION PACKAGE**

**July 2003**

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## **PURPOSE**

The purpose of the Asia/Pacific Group on Money Laundering (APG) *Alternative Remittance Regulation Implementation Package* is to provide practical guidance, information and examples for jurisdictions to draw upon in implementing regulatory systems for alternative remittance providers.

The recommended courses of action contained in the *APG Alternative Remittance Regulation Implementation Package* have been developed with the following objectives in mind:

- Provide strategies for effective monitoring and control of alternative remittance systems.
- Outline an approach to implementation which, if applied by all jurisdictions, would make our systems collectively more resistant to abuse by international money launderers and financiers of terrorism.
- Provide an approach which is highly effective but still within the capacity of most jurisdictions to implement.
- Recognising that in most jurisdictions alternative remittance systems have legitimate uses, limit as far as possible the burden placed on alternative remittance operators when complying with the regulatory or licensing requirements in their jurisdictions.

## **INTRODUCTION**

Alternative remittance systems are financial services, traditionally operating outside the regulated financial sector, where value or funds are moved from one geographic location to another. There are several methods by which these systems operate and these are often referred to by different terms, including 'hawala', 'hundi', 'fei-chien' and 'the black market peso exchange'.

As 'know your customer' and other anti-money laundering strategies have been introduced in the formal financial sector, they have had a deterrent effect, which has led to a shift in money laundering activities away to other sectors. Since 1996, jurisdictions have reported a shift in laundering activity from the formal banking sector to the non-bank sector and non-financial businesses. The lack of regulation and anti-money laundering practices makes alternative remittance systems increasingly attractive to money launderers and the financiers of terrorism.

These systems are widely used by people and businesses for legitimate purposes to send money from one country to another. However, in addition to their use by legitimate clients, jurisdictions have noted alternative remittance systems being used by criminals to launder the proceeds of various criminal activities. From the information available to the Working Group, it is believed suspected that the principal source of criminal funds being sent through alternative remittance systems are drug trafficking and the evasion of government taxes and duties. Alternative remittance systems have also been connected with organised people

smuggling. Recent reports indicate that alternative remittance systems have been used by terrorist groups to transmit funds for the purpose of funding terrorist activities. Investigation of the September 11, 2001 terrorist attacks has found that both formal banking channels and alternative remittance systems were used to transfer money to the terrorists. This underlines the appeal of alternative remittance systems to people committing serious criminal activity and also those involved in terrorism.

The Asia/Pacific Group on Money Laundering ('APG') Working Group on Alternative Remittance and Underground Banking Systems aims to enhance awareness of such systems and make a significant contribution towards reducing the abuse of the systems to facilitate serious criminal activity and terrorism.

The APG Working Group on Alternative Remittance and Underground Banking Systems ('the APG Working Group') was established at the second APG workshop on money laundering typologies in early 1999.<sup>1</sup> The mission of the Working Group has been to conduct "a co-ordinated and intensive examination of money laundering through underground banking and alternative remittance systems". The Working Group has also assisted in the development of law enforcement's understanding of methods of alternative remittance and underground banking.

This report builds on initiatives undertaken by the Working Group since 1999 including; case study collection and analysis, typologies workshops, creation of the *October 2001 Working Group Report* and discussion sessions facilitated to specifically progress compilation and refinement of this package. A preliminary draft version of the Implementation Package was produced for detailed consideration by participants at the APG's 2002 Typologies Workshop. At that Workshop its approach was considered and participants provided options and insights from their own experiences.

Enquiries relating to the implementation package or relating to the APG Working Group on Alternative Remittance and Underground Banking Systems should be directed to the APG Secretariat either via [mail@apgml.org](mailto:mail@apgml.org) or GPO Box 5260, Sydney NSW 2001, Australia.

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<sup>1</sup> Second APG Workshop on Money Laundering Typologies, 2 & 3 March 1999, Tokyo.

## **PART 1- BACKGROUND**

### **APG WORKING GROUP ON ALTERNATIVE REMITTANCE AND UNDERGROUND BANKING SYSTEMS**

#### **Members**

The Working Group comprises representatives from seventeen jurisdictions: Australia, Canada, Chinese Taipei, Hong Kong, China, India, Indonesia, Japan, Kingdom of Cambodia, Malaysia, New Zealand, Pakistan, Republic of Korea, Republic of the Philippines, Singapore, Thailand, the United States of America and Vietnam. Three international organisations are also Working Group members; the Commonwealth Secretariat, Interpol and the World Customs Organisation.

Australia and Thailand were the founding Co-Chairs of the Working Group. Since that time Japan has also been a co-chair.. The current co-chairs are from Hong Kong and Australia.

#### **Previous Initiatives**

Through 1999 and 2000, the Working Group focussed on developing law enforcement's knowledge and understanding of methods of alternative remittance and underground banking. This was facilitated via the sharing of case studies between jurisdictions. In February 2000, the Working Group produced a collection of 62 case studies from member jurisdictions from which the following conclusions were drawn:

- A mix of legitimate funds and criminal proceeds were found to be moving via alternative remittance systems.
- In cases involving the remittance of criminal proceeds, the majority of funds were suspected to derive from narcotic offences. Other suspected predicate offences included people smuggling and revenue evasion.
- Most alternative remittance systems detected operated within the Asia/Pacific region, i.e. funds were remitted within the region.
- The majority of alternative remittance systems detected involved the use of the regulated financial sector as well as other methods<sup>2</sup>.

Building on the typologies work and other initiatives, in October 2001 the Working Group provided a report to the 4<sup>th</sup> APG Money Laundering Methods and Typologies Workshop. This report consolidated the available information and made twelve recommendations to the APG focusing on the implementation of regulatory and enforcement strategies relating to alternative remittance and underground banking. The recommendations from that report are at **Annexure 1**.

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<sup>2</sup> This probably reflects the enhanced ability of law enforcement to detect money laundering occurring in the regulated financial sector (due to the existence of money laundering control mechanisms) vis-à-vis purely unregulated financial channels.

Also at the 2001 APG Typologies Workshop the APG provided a mandate to the Working Group to continue its work. The Head of the APG Secretariat summarised the discussion and views of the APG members as follows:

- The Report had been well received by members and was endorsed.
- The Report and any further recommendations/work should be provided to other appropriate bodies, including the FATF in its review of the 40 Recommendations.
- Work should continue for another 12 months, but success would depend on the commitment of Working Group members.
- It was very important that further work be done to formulate a list of detailed strategies to implement each Recommendation.

During 2002 and 2003, efforts by the Working Group culminated in the production of the *APG Alternative Remittance Regulation Implementation Package*.

## **THE FINANCIAL ACTION TASK FORCE (FATF) AND ALTERNATIVE REMITTANCE SYSTEMS**

The Financial Action Task Force on Money Laundering (FATF) has responsibility for examining money laundering techniques and trends, reviewing action taken at a national or international level, and setting out the measures that need to be taken to combat money laundering. In April 1990, the FATF issued a set of *Forty Recommendations*, which provide a comprehensive blueprint of the steps to be taken to combat money laundering. These recommendations have since been reviewed, with the most recent iteration released on 20 June 2003<sup>3</sup>.

The FATF monitors members' progress in implementing anti-money laundering measures, reviews money laundering techniques and counter-measures, and promotes the adoption and implementation of anti-money laundering measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering. The FATF has conducted a number of typologies exercises which have recognised the use of alternative remittance systems to launder criminal proceeds. Every FATF typologies report since 1996 has noted the use of alternative remittance systems by criminal groups to launder money. Alternative remittance systems were a particular focus of the FATF annual meeting on money laundering methods and trends held in November 1999 and are therefore addressed in some detail in the 2000 FATF *Report on Money Laundering Typologies*.

After the events of 11 September 2001, a number of governments called for a rapid and co-ordinated effort to detect and prevent the misuse of the world financial system by terrorists. At an extraordinary plenary meeting on the financing of terrorism held in Washington, DC, on 29 and 30 October 2001, the FATF expanded its mission to include terrorist financing as well as money laundering. During that meetings, the recommendations of the October 2001 report of the APG Working Group were considered.

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<sup>3</sup> [www.fatf-gafi.org/pdf/40Recs-2003\\_en.pdf](http://www.fatf-gafi.org/pdf/40Recs-2003_en.pdf)

On 31 October 2001 the Financial Action Task Force (FATF) released the *Special Recommendations on Terrorist Financing* which, when combined with *The Forty Recommendations* on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts. Special Recommendation 6 deals with alternative remittance and states:

***Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.***

This Recommendation consists of three major elements:

- Jurisdictions should require licensing or registration of persons or legal entities providing money/value transmission services, including through informal systems or networks.
- Jurisdictions should ensure that such money/value transmission services are subject to FATF Recommendations 5-16.
- Jurisdictions should be able to impose sanctions on those money/value transmission services that fail to obtain a license/register and that fail to comply with relevant FATF Recommendations.

The FATF has released various interpretative material and guidance relating to alternative remittance<sup>4</sup>. In particular, the FATF issued an Interpretative Note for Special Recommendation 6 in February 2003. This was followed by a Best Practices Paper, clearly drawing from the experience of the APG Working Group as well as others, issued in June 2003. These documents further clarify the need for all money/value transfer systems to be registered or licensed, along with having their services subject to the full range of obligations under relevant FATF Recommendations.

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<sup>4</sup> [www.fatf-gafi.org/TerFinance\\_en.htm](http://www.fatf-gafi.org/TerFinance_en.htm)

## OTHER INITIATIVES

In recent years a number of other studies have been undertaken in relation to alternative remittance systems. As of 2002, key studies and statement of commitment include:

- *International Conference on Hawala*, hosted by the Central Bank of the United Arab Emirates, May 2002. Delegates to this conference produced the *Abu Dhabi Declaration on Hawala* (available via the APG website [www.apgml.org](http://www.apgml.org)).
- *Joint Ministerial Statement* from the 9<sup>th</sup> APEC Finance Ministers' Meeting, September 2002. The *APEC Action Plan on Combating the Financing of Terrorism* attached to that statement includes :
  - i) A call on officials to explore the factors in the formal financial sector which encourage the use of alternative remittance systems.
  - ii) Support for the recommendations made by the APG Working Group in its 2001 report.
  - iii) Support the Abu Dhabi Declaration on Hawala.
- IMF paper *Informal Funds Transfer Systems: An Analysis of the Hawala System*, forthcoming 2003<sup>5</sup>.
- World Bank Working Paper, *The Money Exchange Dealers of Kabul: An Analysis of the Hawala System in Afghanistan*, forthcoming 2003<sup>6</sup>.
- U.S. Treasury (FinCen) report to Congress on Informal Value Transfer Systems, November 2002<sup>7</sup>.

It is intended that the current work of the APG Working Group will complement these initiatives and the ongoing work of the Financial Action Task Force. Together these groups can raise the level of understanding of alternative remittance systems and aid in counteracting serious criminal activity and terrorism.

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<sup>5</sup> El Qorchi, M., Maimbo, S. and Wilson, J. (2003) *Informal Funds Transfer Systems: An Analysis of the Hawala System*, IMF Occasional Paper, forthcoming August 2003.

<sup>6</sup> Maimbo, S. (2003) *The Money Exchange Dealers of Kabul: An Analysis of the Hawala System in Afghanistan*, World Bank Working Paper series, forthcoming 2003

<sup>7</sup> A Report to the Congress in Accordance with Section 359 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), November 2002.

## PART 2: ALTERNATIVE REMITTANCE SYSTEMS

**Alternative Remittance Systems** are operated by entities ('alternative remittance operators') for moving money or other forms of stored value between countries on behalf of customers who do not wish to directly use the 'formal' banking system. Alternative remittance systems can also be called Informal Value Transfer Systems. There are two general types of Alternative Remittance Systems - *Underground Banking* and *Alternative Remittance*:

- **Underground Banking** involves use of a variety of methods through which funds (or value) are made available at a partner service in the recipient country as a result of an advice sent between the alternative remittance operators<sup>8</sup>. No remittance of money through the regulated financial sector is involved, rather the operators providing this service run ledgers which may at some stage be reconciled through movement of value between countries through a remittance, physical cash carrying, trade (including through invoice manipulation) or via commodities other than cash (eg. gold smuggling). The nature of these systems maintains the anonymity of their customers and the transactions and makes their operations difficult for regulatory authorities to monitor.
- **Alternative Remittance** is remittance by alternative remittance operators of funds from clients through the regulated financial sector. These remittances are coupled with techniques designed to conceal the nature of the transaction, such as 'structuring', the use of false bank accounts and/or sender details and commingling of licit and illicit funds. Because these systems use the 'formal' banking system in the process of funds transfer, some of these activities may come to the attention of regulatory authorities.

It is well established that alternative remittance systems are used as a means of efficiently transmitting funds to another jurisdiction, primarily for one or more of the following reasons:

- The alternative system can be cheaper, faster and more efficient than official channels.
- Alternative remittance providers are often available outside the normal banking business hours.
- Long established cultural practice.
- The identity of those moving money through these systems is hidden from governmental authorities.
- Little, if any, identification or completion of paperwork is required. Bank accounts do not need to be opened.
- Assets are protected against seizure by government.
- Foreign currency exchange restrictions are avoided.

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<sup>8</sup> eg via telephone call, telex, fax or Internet.

- Money can be sent to / from locations where the formal banking system does not operate.

Alternative remittance systems are more entrenched in some regions than others for cultural and other reasons. Underground banking is a long-standing tradition in many countries in Asia and the Arabian Gulf, pre-dating the spread of Western banking systems in the 19<sup>th</sup> and 20<sup>th</sup> centuries. These services operate primarily to provide transfer facilities to neighbouring jurisdictions for expatriate workers repatriating funds.

It is acknowledged that the majority of the funds which are transmitted through alternative remittance systems are from legitimate sources. Alternative remittance services provide a legitimate and efficient financial service in many jurisdictions. The principal threat posed by the existence of these services is the opportunity they present to unscrupulous individuals to transfer the proceeds of criminal activities.

Notwithstanding the legitimacy of many AR & UBS transactions, the principal concern is its vulnerability to misuse by individuals and groups seeking to launder the proceeds of criminal activity. Not only do unregulated alternative remittance systems permit funds to be sent anonymously but few, if any, records are kept and the remittances are principally conducted outside of the regulated formal banking system. This facilitates the money launderer to be able to freely send funds without needing to identify himself and in a manner which means it is extremely difficult, if not impossible, to trace after the transaction has been completed.

Although a large number of case studies and anecdotal information has been considered by the Working Group since its inception, it is still not possible to draw firm conclusions on the extent to which alternative remittance services are used to facilitate the laundering of criminal proceeds of organised criminal activity.

## **PART 3: IDENTIFICATION OF ALTERNATIVE REMITTANCE OPERATORS**

### **WHY IS IDENTIFICATION OF ALTERNATIVE REMITTANCE OPERATORS IMPORTANT?**

While there are a multitude of criminal and terrorist groups involved in various activities in a range of locations, strategies designed to make our international environment more hostile to their activities must focus on the facilities these groups use and abuse to support their criminal and terrorist acts. Alternative remittance operators, like financial institutions, provide services that can be abused by these groups.

The fact that alternative remittance operators are often not known to regulatory and enforcement agencies, is a characteristic which makes them attractive to money launderers and the financers of terrorism. Identification of alternative remittance operators will make it more difficult for criminal and terrorist groups to successfully use alternative remittance systems to facilitate and hide the financing of their activities. Consequently, as the alternative remittance operators are known to regulators, they become a less attractive option for criminal and terrorist groups.

The lack of a paper trail is but one of several difficulties experienced in investigations of the criminal use of alternative remittance services. This absence of records makes identification of the alternative remittance operators themselves important if investigations of criminal and terrorist activities are to succeed.

### **IN WHICH JURISDICTIONS IS IT IMPORTANT?**

It is acknowledged that identification of alternative remittance operators is likely to be less of an issue in the small number of jurisdictions where alternative remittance in fact represents the only viable financial system. In such jurisdictions, alternative remittance operators are more likely to operate openly and to be known to local businesses, regulatory and enforcement officials, and international aid organisations.

For the majority of jurisdictions however, proactive identification of alternative remittance operators is an integral element of establishing and maintaining an effective registration / licensing regime. Once alternative remittance operators have been identified, compliance programs can be conducted in which the agents are approached, their details are recorded and they are provided information as to their obligations. Once regulatory regimes are in place, ongoing compliance work will include strategies to identify unlicensed / unregistered operators and to ensure all record keeping and reporting obligations are being met.

Formalised strategies and ongoing processes for identification of alternative remittance operators are particularly important for a successful registration / licensing regime in those countries where alternative remittance and underground banking practices are conducted primarily by minority ethnic communities and are thus outside the experience of the majority of regulators and investigators.

Proactive identification of alternative remittance operators is also important for law enforcement efforts in those jurisdictions where alternative remittance and underground banking systems are banned. In India for example, where underground banking is prohibited by law, estimates were made in 2000 that up to 50% of the economy uses the hawala system for moving funds.

### **WHY IDENTIFICATION OF ALTERNATIVE REMITTANCE OPERATORS CAN BE DIFFICULT**

The FATF typologies exercise in 1997 recognised that it is difficult to even identify the businesses which offer alternative remittance services. Numerous characteristics of alternative remittance and various methodologies they employ shield them from regulatory and law enforcement detection.

Alternative remittance operators are difficult to trace from financial intelligence due to the limited recordkeeping and limited involvement of the regulated financial sector.

Alternative remittance transactions commonly take place in the context of loose affiliations or networks, not corporate structures. Often alternative remittance networks operate within a single ethnic community where family and other links provide the trust that is the basis for the relationship. Conducted informally, with little in the way of overheads or regulatory infrastructure, they can be well insulated from detection by persons from outside that community.

The involvement of a business with an alternative remittance operator is not always apparent. Often an alternative remittance service is operated through, or in combination with, other businesses, including:

- Gold / jewellery shops.
- Money changers.
- Unregulated financial houses.
- Foreign exchange and international fax facilities.
- Other small businesses such as clothing retail, travel agencies and guest houses.
- Trading companies.

Some are conducted from private residences.

Some operate with a presence at markets.

A very small proportion of larger, more sophisticated alternative remittance enterprises have established websites. Some solicit business through open

advertisements in telephone directories, local community press and radio. Generally however, alternative remittance operators advertise by word of mouth or use relatively inexpensive forms of advertising such as distribution of flyers/brochures or placing signs in shop windows.

Due to the varied size, location and nature of the alternative remittance operators and the various methodologies they employ, regulatory and enforcement agencies need to apply a range of strategies to identify alternative remittance operators, using a number of approaches concurrently.

## **STRATEGIES TO IDENTIFY ALTERNATIVE REMITTANCE OPERATORS**

A range of strategies for identifying alternative remittance operators have been distilled from the experience of APG member jurisdictions.

### **Strategies Targeted at the Alternative Remittance Operators**

#### *Detection of Advertising by Alternative Remittance Operators:*

Perusal of the full range of media to detect advertising conducted by alternative remittance operators. This includes national, local and community newspapers and radio and also the internet. In jurisdictions where it is possible to identify ethnic communities which utilise alternative remittance systems, advertising through the ethnic press is a common means of communicating services offered. Accordingly, finding such advertisements is a simple and effective method of identifying alternative remittance providers.

#### *Awareness Campaigns:*

Education and compliance programs are essential. These may include issuing of circulars or advice by Financial Intelligence Units (FIUs) or others, information on websites, advertising in the press, press releases, media interviews. These awareness programs may additionally include visits to businesses which may be alternative remittance operators to advise them of registration and/or reporting obligations can also be used as opportunities to seek information about others in their industry.

#### **Example - Australia**

AUSTRAC has conducted a number of compliance programs, educating alternative remittance operators on a community-by-community basis. To this end, AUSTRAC advertises in the ethnic press.

AUSTRAC believes the awareness campaign is having a positive effect. For example, reports of international funds transfers by alternative remittance operators increased threefold in the twelve months following commencement of the awareness campaign. Further, several money remitters have ceased operating. Although it is possible that this has been caused by the administrative costs of reporting transactions to AUSTRAC, it is suspected that at least some of these businesses which ceased operation were involved in illicit activities.

### **Strategies Targeted at the Broader Public**

Requests for Alternative Remittance Operators to Identify Themselves:

Use of the full range of media to inform alternative remittance operators of their obligations to register and/or report transactions.

*Awareness Campaigns – Alternative Remittance Operators:*

Provision of information about alternative remittance systems and about the regulatory obligations of alternative remittance operators to businesses which may deal with alternative remittance operators. Through providing this information to businesses, they may be better able to identify and provide information to authorities about those they know who may be alternative remittance operators.

### **Strategies Targeted at Investigative Agencies**

During investigations, information about alternative remittance operators may be uncovered which should be passed on to FIUs and others. Investigators need to know therefore what it is they have uncovered when they come across alternative remittance activities.

*Awareness Campaigns:*

FIUs and bodies involved in investigating money laundering should ensure that the full range of training and awareness opportunities are seized. These should be used to provide investigators with information about alternative remittance services, recordkeeping and reporting obligations of alternative remittance operators and ways in which their services can be used by criminals and terrorists. This information can be provided through training courses, presentations at seminars and conferences, articles in policing journals and other publications.

*Covert Investigative Strategies:*

Various enforcement agencies have had considerable success with proactive covert strategies, involving the use of confidential informants, undercover agents and special investigative techniques which have uncovered information as to who alternative remittance operators are and also information as to the criminal and terrorist groups exploiting these services.

### **Strategies Targeted at the Financial Sector**

Many alternative remittance operators maintain bank accounts and conduct transactions in the formal financial sector as part of other business operations. When analysed, these accounts and transactions involving these accounts, may indicate alternative remittance activities, allowing for the identification of the operators.

Banks and other financial institutions should therefore be assisted in developing an understanding of what activities/indicators are suggestive of alternative remittance operations and use this to identify possible operators. The banks may then cross-check against the register of known alternative remittance operators or may notify the relevant authority either via a suspect transaction report or via other means.

*Awareness Campaigns:*

Publication in various financial sector publications of guidelines to encourage registration and/or reporting and also general material to ensure financial institutions currently subject to suspect transaction reporting requirements develop an understanding of alternative remittance systems.

**Example – Hong Kong**

Following the introduction of legislation in June 2000 requiring remittance operators agents to register with the Commissioner of Police, an extensive awareness campaign was conducted targeting the following sectors :

General Public: Advertisements using television, radio, billboards and newspapers. A website was set up [www.jfiu.gov.hk](http://www.jfiu.gov.hk) which set in detail the legislation and its effect.

Financial Sector: The subject of remittance operators was covered in anti-money laundering training seminars provided by both the FIU and the industries' regulatory authorities. Professional bodies were provided with material to circulate to members. The regulatory bodies provided materials and briefings to the relevant industries.

Law Enforcement Agencies: Articles were circulated using law enforcement's internal communication methods such as the police newspaper. The subject was raised in training days to general units and covered extensively in briefings given to units likely to encounter remittance operators.

*Use of Financial Institutions' Compliance Systems:*

A number of the strategies designed to raise awareness will also better equip financial institutions to identify new methodologies and indicators of alternative remittance activities. Many financial institutions have computer systems to automate their compliance activities and inform them of suspicious financial activity. Incorporating details of patterns of transactions which might indicate alternative remittance into these systems may serve to identify alternative remittance activities and the operators.

**Exploitation of Financial Intelligence**

While noting there are many variations of the methodologies employed by alternative remittance operators, alternative remittance systems using the regulated financial sector can involve attempts to conceal the nature of the transactions by methods such as structuring, use of bank accounts in false names or borrowed accounts, false sender details or co-mingling of licit and illicit funds.

*Profiling Financial Intelligence:*

Financial intelligence can be profiled to detect these key methodologies and from this, the operators involved. FIUs, investigative agencies and financial institutions should look for particular information or patterns of financial information which indicate this type of activity and from the activity identify the alternative remittance operators involved.

### **Example - Japan**

The Japan Financial Intelligence Office (JAFIO) issued a guideline to financial institutions requiring that certain transactions – such as a large amount of overseas remittances sent frequently within a short period of time, and frequent overseas remittances to the same person – be considered suspicious and therefore reported to JAFIO. As a result of this guideline, JAFIO received more than 1,500 suspicious transaction reports during 2000. This intelligence was forwarded to law enforcement agencies, where it was used to uncover unlawful activities. In conjunction with other sources of intelligence, law enforcement agencies were able to successfully investigate and prosecute illegal activity involving alternative remittance systems.

#### *Targeting Certain Cash Transactions:*

Investigations have confirmed the value of targeting particular cash transactions and money couriers, of directing awareness activities at travellers who may act as money couriers and of the analysis of the relationship between couriering of cash and alternative remittance activities.

#### **Example – United States** *(case study noted in full in the next chapter)*

A New York based task force instigated a Geographic Targeting Order (GTO) requiring money remittance agents to report to FINCEN details of senders and recipients of all cash transactions to Colombia of US\$750 or more. Following implementation of the GTO, U.S. Customs seized more than US\$50 million cash being physically smuggled emanating from area within which the GTO was applied – approximately four times the amount seized in previous years.

#### *Indicators of Suspicious Financial Activity:*

Some currently used indicators of suspicious financial activity, such as those found in the *FATF's Guidance for Financial Institutions in Detecting Terrorist Financing*, are likely to be relevant for alternative remittance activity. For example, transaction activity which in volume or frequency is occurring in amounts greater than that which ordinarily would be expected given the purported nature of the account holder's business may indicate use of accounts to operate an alternative remittance business. Also, accounts of individuals in more than one country which have a significant volume of transactions.

### **Information Sharing**

Effective cooperation and information sharing is necessary to tackle the borderless nature of alternative remittance activities and its underground nature. This means close liaison and exchange of intelligence and information in relation to alternative remittance activities and its operators. It is vital to share and learn from each other, building on collective resources and experience. Multi-agency initiatives can be highly effective, with information sharing resulting in various pieces of information being put together which culminate in the identification of alternative remittance operators.

Alternative remittance operators often work within loose international networks therefore international exchange of information about alternative remittance operators, sharing of registers, can be a highly effective strategy. Local alternative remittance operators can be identified by working back from information about international alternative remittance operators and by ascertaining who in the local jurisdiction has been in contact with the identified international alternative remittance operators.

### **CONCLUSION**

If alternative remittance operators are known to regulators, they become a less attractive option for criminal and terrorist groups. Proactive identification of alternative remittance operators is important for a successful registration / licensing regime and is also important in those jurisdictions where alternative remittance activities have been banned.

Some characteristics of alternative remittance and various methodologies they employ shield them from regulatory and law enforcement detection. Agencies need therefore to apply range of strategies to uncover alternative remittance operators, using a number of approaches concurrently.

## **PART 4: REGULATION OF ALTERNATIVE REMITTANCE OPERATORS**

### **CURRENT REGULATION OF ALTERNATIVE REMITTANCE OPERATORS**

In the 1980s and 1990s, as governments and policy bodies became more aware of the problem of money laundering, research was done to identify the methods by which funds were transmitted between two entities. By the late 1992 it was realised that alternative remittance systems facilitated fund transfers often outside of the formal banking sector and the use of these systems by money launderers and the financiers of terrorism needed to be addressed.

International efforts to control alternative remittance systems have until recently been haphazard and lacking in commitment. The approaches to dealing with these systems have differed from jurisdiction to jurisdiction. This can to some extent be attributed to differences in understanding of the nature alternative remittance systems and of the use of such remittance systems by criminal and terrorist groups. It may also be attributed to differences in attitude towards the legitimacy of alternative remittance systems which operate outside of the formal financial sector.

The inclusion of Alternative Remittance as Special Recommendation VI in FATF's *Special Recommendations On Terrorist Financing* in October 2001 brought the regulation of these systems to international attention. As mentioned previously, the FATF has issued an Interpretative Note and a Best Practices Paper in relation to Special Recommendation 6. This Special Recommendation is now the subject of self-assessment exercises<sup>9</sup> and has been incorporated in mutual evaluation methodologies.

Some jurisdictions, such as India and Japan, have introduced legislation which effectively make the use and operation of alternative remittance systems illegal. In some jurisdictions, there is no government regulation of alternative remittance providers but some form of self-regulation exists. Based on the information available, alternative remittance systems are subject to minimal if any government regulation in the majority of jurisdictions. It is encouraging to note that several jurisdictions are implementing systems to enable more effective control of the activities of these services. For instance, Canada, Hong Kong, Thailand and the U.S. have all introduced some form of regulation aimed at alternative remittance systems. Although it is too early to assess the effectiveness of these provisions, initial feedback indicates that they have allowed law enforcement to more accurately identify the alternative remittance services and their activities.

Criminals and terrorists gain from a closed system and if a jurisdiction is determined to combat money laundering and terrorist financing, the need to introduce some form of regulation to minimise the opportunity for such systems to

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<sup>9</sup> [www.fatf-gafi.org/SAQTF\\_en.htm](http://www.fatf-gafi.org/SAQTF_en.htm)

be misused is clear. The question which then arises is how to effectively regulate alternative remittance systems.

It is considered that to be effective in addressing the problem of alternative remittance systems and recognising the legitimate uses of such systems, regulations should not be overly restrictive. While the various reasons which make alternative remittance systems attractive – speed of transactions, low cost, wide availability etc – remain, the demand for alternative remittance services will continue. Regulation must facilitate those who abuse these systems to be found and stopped, but it should not be so burdensome that it, in effect, attempts to turn ‘alternative’ remittance businesses into a formal financial sector. At the International Conference on Hawala held in Abu Dhabi in May 2002, while endorsing the need for regulation of alternative remittance, it was commented that over-regulation would cause the systems to go “underground”, making it even harder to uncover money laundering and terrorist financing being conducted through these systems .

It is accepted that in introducing regulation of alternative remittance operators, additional burdens are placed on the governmental authority administering the scheme. However, maintaining a register of alternative remittance operators is likely to be a relatively cost effective approach when compared to the significant resources required by regulatory and enforcement bodies to identify unregulated operators and investigate use of their services by money launderers and the financiers of terrorism. Furthermore, if the operators are on record with the regulatory body, the jurisdiction’s FIU will be able to make a more appropriate assessment of any reports made to it which involve such operators. This enables the FIU to be more effective and efficient in its operations whilst enhancing the monitoring and regulation of alternative remittance systems.

In devising the following elements of a regulatory system to be applied to alternative remittance operators, a number of key principles were applied.

- Provide practical guidance, information and examples for jurisdictions to draw upon in building a regulatory system for alternative remittance systems. Whilst much has been said in recent years about alternative remittance systems, little such guidance has been provided.
- The need to have a minimum standard applied by all jurisdictions, making the systems more resistant to abuse by international money launderers and financiers of terrorism. Criminal and terrorist organisations take advantage of any lack of harmonisation among national and international regulatory and criminal justice systems to hide and effectively launder their funds.
- Provide strategies for effective monitoring and control which will aid money laundering and terrorist financing investigations.
- Recognise that in most jurisdictions, alternative remittance systems are legitimate and a large proportion of alternative remittance activity is legitimate.
- Limit as far as possible the burden placed on alternative remittance providers and on regulators in introducing and complying with these

strategies. Regulatory systems should not push the alternative remittance providers further underground.

These are the key points which need to be considered in devising regulatory programs for the sector which will balance the needs of the regulator and those of the operators.

## LICENSING OR REGISTRATION?

Licensing and registration are two variations on the same theme and as such, the difference between the two may seem slight. The FATF defines licensing and registration in its *Guidance Notes for the Special Recommendations on Terrorist Financing* as:

Licensing – *a requirement to obtain permission from a designated government authority in order to operate a money/value transmission service*

Registration – *a requirement to register or declare to a designated government authority the existence of a money/value transmission service in order for the business to operate legitimately*

From these definitions, it can be seen that a key element of both registration and licensing is the requirement that the relevant regulatory body is aware of the existence of the business. The difference between the two is that licensing implies that the regulatory body has sanctioned the particular operation before it commences business, whereas registration implies that the operator has informed the regulatory body of its existence.

At its simplest, registration would give rise to a list of the alternative remittance operators, but without the suitability of those operators to conduct alternative remittance services having been assessed.

Other matters to be taken into consideration in constructing a regulatory system include whether the registration / license will be valid for a set period of time, whether a fee will be payable when registering and whether the register will be open to the public to inspect.

Some areas within one jurisdiction have introduced a licensing system in which alternative remittance operators must post a sizeable bond with the government before being licensed. As many alternative remittance operators run other businesses and the remittance aspect is an adjunct, then to be required to post a bond is likely to cause the operator, who may be unable to conduct sufficient business to afford to post the bond, not to register with the regulatory body and instead to operate in a less open fashion.

Another jurisdiction has introduced a system of registration in which the operator needs only to report the commencement of business as a remittance operator.

This is done at no cost to the operator other than the time to complete the form and submit to the regulatory body.

It is expected that the proportion of operators complying with the regulatory system will be higher where the regulatory requirements impose a lesser administrative, financial and/or other burden on them. It should be noted however that this conclusion is drawn on the basis of limited comparisons in light of the relatively small number of jurisdictions in which such legislation has currently been implemented.

## **CRITERIA FOR REGISTRATION / LICENSING**

In determining whether an application for registration or licensing can be accepted by the regulatory authority, it is clear that some form of scrutiny of the application and the operator needs to be conducted. This is in line with FATF Recommendation 29 which states that regulators should introduce *“the necessary legal or regulatory measures to guard against control or acquisition of a significant participation in financial institutions by criminals or their confederates.”*

In introducing the scrutiny of an application and the operator, regulatory authorities will need to consider whether the applicant is suitable to operate an alternative remittance service.

From discussions, two principle areas have been identified which affect the suitability of a person to operate or continue to operate an alternative remittance service. These are:

- i) the background of the operator, or in the case of corporate entities, the background of the shareholders and directors; and
- ii) compliance with anti-money laundering principles.

Firstly, addressing the subject of the background of the operator. When considering the suitability of a potential operator, the authorities will have access to a variety of data, the most relevant of which would be the criminal record of the operator. Obviously, a convicted money launderer is not the type of person which authorities would consider appropriate to operate an alternative remittance service. If it is accepted that a criminal record is an appropriate factor for determining one's suitability to be registered or licensed, consideration should be given to defining the type of criminal record which would make the applicant ineligible to be a registered or licensed remittance provider.

In considering what types of offences may bar a person from being registered or licensed, jurisdictions may consider applying existing classifications of 'serious offences' or 'indictable offences', including offences such as drug trafficking, fraud and money laundering. Other offences which are specifically relevant to operating a business or financial service which may not normally be considered 'serious offences' or 'indictable offences', such as 'Failing to Keep a Proper Record' would also need to be included in the category of criminal convictions which would result in an applicant being considered not suitable to carry on an alternative remittance business.

In some regulatory systems, authorities may examine the associates and families of an operator and all of the organisation's employees. However, in the interests of avoiding creating an over-burdensome regime, it is considered that only the principal persons having control over the operations of the remittance service such as the person-in-charge, if a sole proprietorship or partnership, or the shareholders and directors for corporate entities, are sufficient. It is suggested that should authorities become aware that a close associate or family member of an operator or an employee of the organisation is closely involved with criminal activities, inspections and enforcement of the service should be stepped up in accordance with the risk to closely monitor the situation.

### **Who Must Register**

It is not uncommon for alternative remittance service operators to have several operators working for them in different locations with all the transactions being conducted through the principal alternative remittance operator. When the USA introduced its legislation concerning 'Money Service Businesses', which includes alternative remittance service operators, a decision was made not to require agents to register with the regulatory authority but a list of the agents is required to be kept available by the principal money service business for inspection. However, this may cause some difficulty for the regulatory or enforcement authorities in identifying registered / licensed operators. It also makes it harder for the financial institutions in determining whether to make a STR. Therefore it is considered to ensure consistent application of the regulations to all operators of alternative remittance services and to facilitate the most effective monitoring possible, it is advantageous to require all persons / corporate entities operating alternative remittance services to be registered with or licensed by the regulatory authority.

### **Display of Registration Certificate / Licence**

Once an entity is registered / licensed, it is recommended that they be required to display their license/registration to customers. This requirement is intended to enable clients to identify registered / licensed operators which in turn will encourage legitimate operators to be registered or licensed as they will attract legitimate clients. It has also been commented that the absence of a registration certificate or licence could be used to demonstrate a client's state of mind in choosing such an operator which could assist in proving some elements in a money laundering prosecution.

When considering creating a licensing or registration requirement, some jurisdictions have raised the concern that the public will believe the regulatory authority will have examined the creditworthiness of the operator and thus may be blamed by the public if problems occur. In an attempt to minimise this risk, it is possible for the registration/license document displayed by the operator to include an indication that the regulatory authority assumes no responsibility for the creditworthiness of the operator.

Information could also be made available to customers about the regulatory authority which they can contact to report any suspicious activity by alternative remittance operators.

## **PRINCIPLE REQUIREMENTS FOR EFFECTIVE REGULATION**

There is key information which regulatory and enforcement bodies need to access to facilitate effective investigations of money laundering and terrorist financing involving alternative remittance services. Essentially, agencies need information about the customers, the transactions themselves, any suspicious behaviour, the alternative remittance provider's location and the accounts used. The remittance operators must also have further records on hand available to assist regulatory and enforcement bodies as needed.

### **Customer Identification**

The principle of Know Your Customer ('KYC') has been the backbone of anti-money laundering measures which have been introduced to financial service providers in recent years and this should also be the case for the alternative remittance sector. Customer identification requirements in the formal financial sector have had a deterrent effect, causing a shift in money laundering activities to other sectors.

FATF's Recommendation No. 10 addresses the subject of Customer Identification and is considered to be the minimum effective level which alternative remittance operators should be required to fulfil. The current recommendation sets out that for persons, the institution should "*identify, on the basis of an official or other reliable identifying document*" the client, and for corporate entities, the institution should "*verify the legal existence and structure of the customer by obtaining from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address ...*" and "*to verify that any person purporting to act on behalf of the customer is so authorised and to identify that person.*" Anonymous transactions are not permitted. Nor are transactions in assumed names.

As jurisdictions differ on the standard of "*official or other reliable identifying document*" to be used when dealing with financial institutions, it is considered that jurisdictions should introduce for remittance operators the same standard of the identifying documents as those currently in force for other financial institutions. The documents commonly acknowledged and accepted for identification purposes are identity card, passport, driving licence or social security card.

Proof of identity should be required when establishing a business relationship with the alternative remittance operator whether the relationship is a short term i.e. a single transaction, or a long term one.

In consideration of the lesser risk of money laundering when small amounts are involved, jurisdictions may consider introducing a threshold below which identification of the client is not needed. However, in determining the threshold,

jurisdictions should be cognisant of the need to balance the risk of structuring against the interests of not imposing too onerous an administrative burden on alternative remittance operators. Regardless of any threshold, identity should be required to be produced if the alternative remittance operator has any reason to suspect that the transaction may be related to money laundering or terrorist financing.

**Examples - Thresholds for Identification Requirements**

- Hong Kong has introduced a threshold of HK\$20,000 (approximately US\$2,500) per transaction.
- Australia expects identification to be provided for all international transfers, either when opening an account from which the transfer is made or when making a one-off transfer.

If a transaction is being made on behalf of another person, information about the true identity of the person on whose behalf the transaction is conducted should also be sought by the alternative remittance operator.

It must be recognised that a proportion of alternative remittance transactions are requested by phone, fax or internet. It is considered appropriate and in the interests of limiting international money laundering for these transactions to only be conducted after customer identification complying with FATF Recommendation 10 has occurred i.e. a business relationship has already been established. If the client's identification has not been previously established, then the transaction should not to be entertained.

It is important for the credibility of the system that failure to produce an acceptable form of identification will mean that a client will be rejected, the transaction will not be conducted and a suspicious transaction report will be made.

**Record Keeping**

Some transaction records must be kept in order for an audit trail to be created. FIUs need records in order to be satisfied of compliance of the alternative remittance operators with reporting obligations and any other regulatory requirements. Investigative agencies need to be able to retrace transactions and identify persons effecting the transactions, i.e. the audit trail, if they are to successfully investigate money laundering and terrorist financing. The requirement for alternative remittance operators to maintain records is essential for effective regulation of the sector, but it is this area in which the balance between the regulator's needs and the burden on the operator most clearly needs to be struck.

FATF's Recommendation 10 addresses the subject of record keeping concerning the identity of clients. It states that institutions should "*record the identity of the clients either occasional or usual, when establishing business relations or conducting transactions*". This standard must set out the minimum level for which records are kept. Recommendation 12 goes further to state that "*Financial institutions should maintain, for at least five years, all necessary records on*

*transactions both domestic or international, to enable them to comply with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence from prosecution of criminal behaviour.”*

Recommendation 12 clearly sets out the objective of keeping records and the level of detail which is required. The details which should be kept as the minimum to satisfy the objective are as follows:

- i) Name of the client requesting the transaction. Where the client is an agent for a principal, both the agent and principal's details should be kept.
- ii) Particulars of documentation produced to verify the client's identity.
- iii) Contact details of the client.
- iv) Date of the transaction.
- v) Amount and currency of the transaction.
- vi) Name and identifying details of the recipient.
- vii) Location to where the funds should be remitted including full account details if the funds are to be remitted to an account.
- viii) Details of the account used by the alternative remittance operator to process the transaction.

Inclusion of the following details are recommended to further enhance the effectiveness of the audit trail:

- i) Details of any intermediary/ies used to remit the transaction to the recipient.
- ii) Date of completion of the transaction.
- iii) The name of the staff member handling the transaction.  
*Where the transaction involves physical payment of funds to a client:*
- iv) Name of the recipient.
- v) Particulars of documentation produced to verify the recipient's identity.
- vi) Signature acknowledging receipt of the funds.

In cases where the remitter is a corporate entity, in addition to the details of the corporate entity, details of the person requesting the transaction on behalf of the corporate entity and the documentation used to verify their identity should be recorded.

Recommendation 12 also states that records should be kept for a minimum of 5 years. This is an acceptable minimum standard which jurisdictions should apply to alternative remittance operators. In fact, many jurisdictions require the banking sector to keep records for longer than five years.

Whilst different alternative remittance operators may wish to keep their records in various formats such as documents, microfiche or computer records, it is important to recognise the need for regulatory authorities to easily view and understand the data. Jurisdictions should therefore consider setting some

requirements for the form in which the records should be kept, but at a minimum require the records to be kept in an intelligible format.

### **Intermediaries**

It is recognised that the remittance service industry frequently makes use of other alternative remittance operators as intermediaries in conducting transactions. In the process of receiving funds for onwards transmission from another alternative remittance operator to another intermediary or the ultimate recipient, alternative remittance operators are reliant upon the transmitting remittance operator to conduct the appropriate know your customer (KYC) checks. In order for a meaningful audit trail to be in place, the alternative remittance operator should obtain all details of the ultimate recipient from the transmitting remittance operator and should keep those records specified above which relate to their recipient of the funds.

### **Transaction Reporting**

Jurisdictions have introduced differing transaction reporting requirements for financial institutions dependent upon their respective legislation but they can be basically split into two groups, namely suspicion based reporting and threshold reporting. There are some instances of suspicion based reporting being subject to a minimum threshold.

Examination of FATF's *The Forty Recommendations* show that both suspicion based reporting and threshold reporting are discussed. Recommendation 13 states "*If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).*" which clearly advocates suspicion based reporting. Recommendation 19, which introduces the concept of threshold reporting, states "*Countries should consider ... b) The feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount...*" Using FATF as the global standard, it is clear that suspicion based reporting is considered essential and threshold reporting is cited as an option.

To maintain consistency in the approach to alternative remittance operators and financial institutions, it is therefore recommended that jurisdictions introduce transaction reporting in line with their current reporting requirements for financial institutions. However, it is considered given the small amount of funds which may be associated with terrorist financing that no minimum threshold should be introduced for the suspicion transaction reporting.

**Example – United States of America**

In New York, the El Dorado Task Force introduced a Geographic Targeting Order (GTO) from August 1996 to November 1997. It required money remittance agents (which are licensed businesses in New York) to report to FinCEN information on the senders and recipients of all cash transmissions to Colombia of US\$750 or more.

The Task Force identified 12 licensed remittance agencies (and their 1,600 sub-agents) as particularly vulnerable to criminal abuse. Analysis revealed that these agencies had an annual volume of remittances to Latin America of some US\$1.2 billion. Approximately US\$800 million of this total was sent to Colombia. This business volume did not accord with the size of the Colombian community in the New York area. The Task Force calculated that to account for this figure, each Colombian household would have to send approximately US\$50,000 a year through remittance agents to Colombia. However, the median household income of the Colombian community was around US\$27,000 a year. Consequently there was justifiable cause for concern that a substantial proportion of the money being remitted was proceeds of crime, in particular drug trafficking.

By enforcing transaction reporting requirements, the GTO caused a dramatic reduction in the flow of drug money to Colombia. The Task Force found that the targeted remittance agents' overall business volume to Colombia dropped by approximately 30 percent. A major displacement effect was also observed, with much of the money previously sent via remittance agents transferred instead by bulk cash smuggling out of the United States. After the implementation of the GTO, US Customs seized over US\$50 million – which was around four times higher than in previous years.

As meeting reporting requirements incurs administration costs, it is necessary to consider the level of burden placed on operators to comply with regulations. It is possible that being required to establish the administration associated with threshold reporting may result in some alternative remittance operators closing down or choosing not to comply with the regulatory system at all.

**INFORMATION TO BE PROVIDED TO THE REGULATORY AUTHORITY**

**Business Address**

When investigators / regulators are conducting money laundering enquiries or monitoring any suspicious operations of alternative remittance operators, it is necessary for them to be able:

- i) to identify whether an alternative remittance operation at a particular address is a registered one; and
- ii) to identify possible alternative remittance operators within a certain area which may be approached to handle the proceeds of crime or the financing of terrorism.

This can be achieved by requiring the alternative remittance operators to submit details of the addresses from which they operate and to notify the authorities upon any change of address or cessation of business.

It is further recommended that address information be made available both to the public so they may check which alternative remittance operator is properly licensed or registered before using their services, and to investigative / regulatory

authorities during the course of their work. This also has value for financial institutions with which the alternative remittance operators maintain accounts as they are able to check which operators are licensed / registered and thus are more able to identify illegal operators and to report to the FIU accordingly.

### **Accounts Used**

During the course of their operations, alternative remittance operators are likely to handle sizeable amounts of cash from their clients. In processing this cash and in the settlement of transactions, operators often make use of bank accounts. Some operators run a number of businesses, of which remittance is one, and use business accounts to conduct the remittances of funds on behalf of their clients. These accounts must be capable of being identified and should be held in the name of the registered/licensed entity so that the accounts and the register or list of licensed entities can be easily cross referenced.

Hong Kong in its country report for the 2002 APG Typologies Workshop has cited an instance in which a registered remittance operator was found to be utilising accounts for its operations which were not in the name of the registered entity. One of the accounts was in the name of a tourist who had opened the account at the alternative remittance operator's request, though the alternative remittance operator had power of attorney over the account. Another account was in the name of one of the alternative remittance operator's employees.

Requiring the accounts to be in the name of the licensed/registered entity does not restrict the operator from opening as many accounts as they require or at whichever financial institution they desire. It also does not have any cost implications. It is intended that this would act as a deterrent for operators who do seek to assist criminals and terrorists as a direct link between the operator and the funds is created.

A further benefit which will occur if the operators are required to use accounts in the name of licensed/registered entity is that the jurisdiction's FIU is easily able to identify the operator's activity which will facilitate more effective monitoring. It will also provide records of transactions which can be checked against the operator's records to ensure compliance with the record keeping requirements. In fact, this may reduce the reporting requirements for alternative remittance operators.

## **COMPLIANCE**

### **Ongoing Compliance Audits**

The implementation of legislation which requires alternative remittance operators to be registered with or licensed by a regulatory authority does not mean that vigilance can be relaxed. There is a constant need to monitor the field with a view to identifying illegal operators and use of these facilities by criminal and terrorist groups.

Jurisdictions need to ensure that adequate resources are made available to the regulatory authority so it can effectively conduct ongoing compliance work. This is consistent with Part C of *The Forty Recommendations*, particularly Recommendation 30. Failure to do so can suggest a lack of resolve by the jurisdictions to properly address the problem of money laundering through alternative remittance systems and can result in a registration/licensing system which achieves little.

In conducting this ongoing compliance work, the regulatory authority must make visits to operators to allow for the checking of the register's details and the inspection of records. These visits can also be used to further educate alternative remittance operators and to find further information about unregistered operators.

It is essential that the regulatory authority is provided with the authority to check the operations of an alternative remittance service. Random visits should be conducted on all registered / licensed operators. In addition, a process of identifying and classifying operators which are considered to be of high risk should be established. This will permit more focussed compliance work on these high risk operators.

Failure to give the necessary authority to check the alternative remittance service or to only permit access to the remittance service when an offence is suspected to have been committed renders certain aspects of the legislation exceptionally difficult to monitor. The principal aspect which would be affected is that pertaining to record keeping.

### **Access by Enforcement Bodies**

Hong Kong in its legislation regulating alternative remittance operators has provided the police, who also act as the registering authority, with the authority to enter without a warrant any premises other than domestic premises, where an alternative remittance service is being conducted, and demand production of the remittance service's records. Access to domestic premises requires a court warrant. There is also an authority to seize or make copies of these records. It is considered that through enforcement agencies having this authority to access records there will be some deterrence of money launderers and the financiers of terrorism from using alternative remittance operators. If they no longer have guaranteed anonymity in their transactions, these facilities will be less attractive.

### **Removal of Registration / Licence**

To monitor the continued suitability of an individual to conduct a licensed / registered remittance service, systems should be established which would bring any conviction of an operator, shareholder or director following licensing or registration, to the attention of the appropriate authorities. The minimum sanctioning process which could be in place would be one which responds simply to criminal convictions. Conviction through the court system, after avenues of appeal are exhausted, would then trigger de-registration / de-licensing of the operator.

Criminal offences relating to non-compliance with the regulations relating to alternative remittance operators may also be established. These may include offences relating to operating without registration / a licence, failure to ensure customer identification, failure to keep records and failure to provide updated information about the business to the regulatory authority.

Ideally, a jurisdiction would set up a system for sanctioning remittance operators in addition to the criminal sanctions. Such a system could impose a range of sanctions of severity proportionate to the non-compliance being sanctioned. Sanctions could escalate from fines to closure of bank accounts, de-registering / de-licensing of the operator through to laying of criminal charges and in the most serious cases, imprisonment. Criteria would need to be established, and provided to applicants when they register, as to what action would be taken for specified forms of non-compliance. It is acknowledged that there are resource implications associated with creation of an independent body and administration of a comprehensive sanctioning process.

Standards need to be set which determine whether, and if so in what circumstances, a de-registered or de-licensed former operator can reapply. An independent review mechanism to deal with appeals from alternative remittance operators must also be put in place.

In any system, it must be determined whether the institution or the employees or both will be subject to the various sanctions.

## **CONCLUSION**

Key elements to consider in the form of regulatory system being implemented are:

- License or register.
- Time period the registration/license is valid for.
- Display of registration certificate/license to customers.
- Accessibility of the register by the public and authorities.
- Ensuring an ongoing compliance capability.
- Mechanism for sanctioning of non-compliance.

Requirements on alternative remittance operators are:

- Notification on commencement of business.
- Register/license.
- Sight and record identification of customers.
- Keep transaction records for 5 years.
- Provide alternative remittance business' bank account and business address information to the regulatory authority.
- Report as required to the regulatory authority, including making suspicious transaction reports.

## **PART 5: AWARENESS RAISING**

The introduction of a system of regulation for alternative remittance agents needs to be supported by a coordinated program of alternative remittance operator and broader community education. In addition to informing alternative remittance operators of their obligations, work should be undertaken with banks, credit institutions and industry groups to raise awareness amongst bank employees of indicators of alternative remittance. Specific awareness raising initiatives designed to equip law enforcement agencies' staff with information and skills to investigate laundering and terrorist financing via alternative remittance systems also needs to be conducted.

### **ALTERNATIVE REMITTANCE OPERATORS**

Introduction of a registration or licensing system should be reinforced by action to alert the alternative remittance providers to their obligations and provide them with information to help them recognise suspicious transactions and patterns of suspicious transactions. Awareness raising sessions are opportunities to talk to alternative remittance operators about the issues that concern them. They are also opportunities to provide them with information about the implications of money movements for criminal purposes and about they can help to stop misuse of alternative remittance systems.

It was the experience of many FATF members in the 1990s that regulation of bureau de change was not effective initially for two reasons; the bureau often had inadequate education and internal control systems to guard against money laundering and most customers were occasional, making it more difficult for them to 'know their customer'. If bureau de change were found to often have inadequate education to guard against money laundering, then the alternative remittance operators cannot reasonably be expected to educate themselves and each other. This education must come from the regulatory authority or the FIU.

In some jurisdictions where alternative remittance services are the predominant form of financial system, it appears alternative remittance operators may have a form of self regulation, or a code of practice, in place. If such a system or body does exist, it could be an appropriate vehicle for conducting awareness raising activities as well as representing the remittance sector's interests.

As a result of experience with regulation of bureau de change, many jurisdictions now have experience at conducting awareness-raising programs, instituted in support of regulation of bureau de change. In the United Kingdom for example the National Criminal Intelligence Service made fund transmitters aware of their obligations, and in Hong Kong, the police made on-the-spot visits to explain the content of the directive which was issued to money changers and fund transmitters.

Jurisdictions must note that some form of guidelines will need to be prepared and circulated by the regulatory authority to provide guidance to the sector in interpreting the law and giving assistance in identifying common suspicious activity identifiers.

As discussed earlier, effective compliance auditing of remittance services must be an integral part of any regulatory system. Awareness-raising must highlight the risk that non-compliance will be identified. Effective compliance auditing must ensure that that risk is real.

It is unlikely that educating alternative remittance services or their agents in relation to their legal obligations will have a significant impact on those services which knowingly assist in the movement of illicit funds. Nevertheless, it would have some deterrent value by alerting them to the fact that they are known to the authorities and will be monitored by them.

In some jurisdictions where regulation has been implemented, considerable resources have been devoted to the education or awareness-raising of remittance services. This education has taken the form of visits to remittance services and agents, the distribution of written material tailored to the needs of particular communities, and advertising through various media. Although it is too early to gauge the long term success of education programs, experience to date indicates that in jurisdictions where such programs have been implemented, increased compliance with reporting requirements has occurred. Further, there has been a reduction in the number of remittance services within particular jurisdictions, which may be attributable to the fact that those providers were offering an illicit service.

## FINANCIAL SECTOR

Awareness-raising activities must also target the regulated financial sector. Many alternative remittance systems utilise the formal financial institutions at some stage in the process. The financial sector should therefore be made fully aware of any regulatory requirements imposed on the (competitive) alternative system. If this is done effectively, it is likely that the formal financial sector will be better placed to assist authorities with information concerning non-compliance, and to avoid being used in the process of transferring illicit funds.

Some guidance already exists in the form of the *FATF Guidance for Financial Institutions in Detecting Terrorist Financing*<sup>10</sup>. A number of the characteristics outlined in Annex 1 to that document are also relevant indicators of financial activity of alternative remittance providers.

The Hong Kong JFIU has undertaken some preliminary work with financial institutions in this regard. It plans to issue an advisory on 'Remittance Agents and Money Laundering', which will include details of some key characteristics commonly observed on accounts used by remittance agents including:

- Large sum deposits and withdrawals, some of which may be in cash.

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<sup>10</sup> [www.oecd.org/fatf/pdf/GuidFITF01\\_en.pdf](http://www.oecd.org/fatf/pdf/GuidFITF01_en.pdf)

- Account used as a temporary repository.
- A high number of transactions but a comparatively low average balance.
- Frequent international funds transfer instructions (IFTIs).
- Multiple transactions below threshold for cash handling related bank charges.
- Frequent no book transactions.
- Deposits made at a variety of branches, which can be concentrated near border crossing points.
- Depositors reluctant to reveal identity or appear to be acting upon instruction.
- Many different depositors.
- Account holder sometimes has no knowledge of the depositor.
- Balance of the account is frequently checked.
- Accumulation of funds prior to large outward remittance. Frequent transactions with other known money service businesses.
- Outward remittances to recipients who apparently have no business / personal relationship with the account holder.

The JFIU has noted that such characteristics can be particularly regarded as 'red flags' of alternative remittance when they are observed on a personal account with no known business connections.

## **LAW ENFORCEMENT AGENCIES**

It is clear that law enforcement agencies in most jurisdictions have only limited experience in identifying alternative remittance activities. It is imperative that steps be taken to equip law enforcement staff with the necessary information and skills. Law enforcement agencies' lack of experience with and understanding of alternative remittance systems hamper their ability to detect and successfully investigate the use made by criminal groups of such systems to launder proceeds of crime and finance terrorism.

The Working Group has since 1999 recognised the need in all jurisdictions to enhance training and develop appropriate skills to better understand, effectively investigate and successfully prosecute money-laundering offences using alternative remittance systems.

Investigative training should encompass training in relation to existing regulation of alternative remittance activities (if any), possible investigative strategies, and the means by which alternative remittance services and their activities can be identified (including their methods of operation, the mingling of licit and illicit funds, nexus with the formal financial system, etc.).

The value of training is particularly important as a strategy by which suspicious alternative remittance activities can be detected where there is no clear or suspicious money trail. For example, cases where value rather than funds is transferred and, as discussed earlier, cases involving ordinary commercial enterprises which engage in trade but also facilitate the movement of illicit funds or value, present a particular challenge.

Training of law enforcement officials should be underpinned by intelligence and information sharing including, the production and sharing of case studies and the ongoing development and sharing of information as to effective investigative strategies.

## **CONCLUSION**

The purpose of this Implementation Package is to provide practical guidance, information and examples for jurisdictions to draw upon in implementing regulatory systems for alternative remittance providers. In doing so, it has built upon initiatives undertaken by the APG Working Group on Alternative Remittance and Underground Banking Systems and has noted relevant guidance from the Financial Action Task Force and others.

Enquiries relating to this package or relating to the APG Working Group on Alternative Remittance and Underground Banking Systems should be directed to the APG Secretariat either via [mail@apgml.org](mailto:mail@apgml.org) or GPO Box 5260, Sydney NSW 2001, Australia.

## **ANNEXURE 1: RECOMMENDATIONS OF THE WORKING GROUP'S 2001 REPORT**

### **2001 APG Working Group Recommendations**

#### ***Number 1***

All jurisdictions should introduce a system of registration and licensing of alternative remittance providers, including agents of principal providers.

#### ***Number 2***

AR & UBS providers should be subject to a strict reporting regimen, to ensure that all significant and suspicious transactions, particularly international remittances, (including individual transactions which are consolidated into larger transfers) are appropriately reported, and the identity of persons transferring the funds is verified.

#### ***Number 3***

All regulation of AR & UBS should be oversighted, monitored and enforced by an appropriately resourced and competent authority, such as a financial intelligence unit. In particular, such an authority must have the capacity to conduct meaningful audits to ensure compliance with registration and reporting obligations.

#### ***Number 4***

It is essential that any system of regulation of AR & UBS is underpinned by appropriate ongoing education programs of remittances services and their agents, to inform them of their obligations.

#### ***Number 5***

Consideration should be given to the formulation of guidelines to the regulated financial sector that they treat customers suspected of engaging in remittance services with the same caution as they would in a correspondent or intermediary relationship.

#### ***Number 6***

The regulated financial sector must be educated about the existence and activities of AR & UBS. The regulated sector will often be an intermediary in the movement of funds and will be in a position to advise of any suspected non-compliance by alternative remittance service. Accordingly, education of the regulated sector must extend to advice on any regulatory requirements imposed upon alternative remittance service providers.

#### ***Number 7***

All jurisdictions should endeavour to collect and share relevant information and intelligence with other affected jurisdictions. This exchange should include the production and sharing of case studies, as well as operational and strategic information, and be facilitated through all available formal and informal liaison

mechanisms, including law enforcement investigative groups, regulatory authority fora, and bodies which can assist with strategies and counter measures, such as the APG on Money Laundering.

**Number 8**

Urgent steps should be taken to equip law enforcement officers with a greater understanding of the operation of AR & UBS, as well as the skills to identify and successfully investigate their activities. This process should include education in relation to applicable regulatory requirements and potential investigative strategies (including the impact of geographic and cultural factors), particularly strategies capable of addressing the more sophisticated transmission of stored value.

**Number 9**

In light of the definition of AR & UBS adopted by the Working Group, it is clear that businesses which conceal the transfer of funds or value as commercial transactions qualify as alternative remittance services. Identification of these transactions presents a particular challenge for law enforcement. Accordingly, bodies such as the APG on Money Laundering should continue to develop strategies to address this major area of concern.

**Number 10**

In recognition that legitimate transactions serviced by alternative remittance services often serve to conceal the fact that those services are also exploited as a means of money laundering, a long term objective is the need to address the cultural, social and economic factors which contribute to the enduring popularity of AR & UBS. This can only be done by addressing the incentives for the use of AR & UBS.

**Number 11**

Strategies to address AR & UBS should be included as part of any holistic approach to money laundering controls. This is particularly relevant where legislation and regulation exists or is being considered.

**Number 12**

In relation to the Forty Recommendations of the Financial Action Task Force:

- Recommendations 8 and 9 should be amended to ensure they clearly apply to AR & UBS providers.
- The list of financial activities referred in the Annex to Recommendation 9 should be extended to cover the transmission of 'value' (as well as the transmission of actual money).
- The scope of Recommendation 28 should be broadened to include alternative remittance services.
- The regulation and supervision envisaged by Recommendation 29 should apply to AR & UBS.